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*Attorneys for Defendants  
MERCK & CO., INC., MERCK SHARP &  
DOHME CORP. and IONIS  
PHARMACEUTICALS, INC.*

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
(SAN JOSE DIVISION)

GILEAD SCIENCES, INC.,

Plaintiff and Counterdefendant,

v.

MERCK & CO, INC., (Defendant only),  
MERCK SHARP & DOHME CORP. and ISIS  
PHARMACEUTICALS, INC.

Defendants and Counterclaimants.

Case No. 5:13-cv-04057-BLF/PSG

~~[PROPOSED]~~ STIPULATION RE  
SCHEDULE FOR MOTIONS AND  
BRIEFING ON JUDGMENT AS A  
MATTER OF LAW

1 Pursuant to Civil L.R. 6-2 and 7-12 and Fed. R. Civ. P. 6(b), Plaintiff and  
2 Counterdefendant Gilead Sciences, Inc. (“Gilead”) and Defendants and Counterclaimants Merck  
3 & Co., Inc. (Defendant only), Merck Sharp & Dohme Corp., and Ionis Pharmaceuticals, Inc.  
4 (collectively, “Merck”) hereby request that this Court set a modified schedule for briefing on  
5 Gilead’s forthcoming motion for judgment as a matter of law with respect to its derivation and  
6 prior invention defenses that is consistent with the schedule for the other post-trial briefing in the  
7 case. In support of the parties’ stipulated request, the parties state as follows:

8 1. Under Federal Rule of Civil Procedure 50(b), renewed motions for judgment as a  
9 matter of law must be filed “no later than 28 days after the entry of judgment,” except that “if the  
10 motion addresses a jury issue not decided by a verdict,” the motions must be filed “no later than  
11 28 days after the jury was discharged.”

12 2. The parties disagree about whether Gilead’s forthcoming renewed motion for  
13 judgment as a matter of law with respect to its defenses of derivation and prior invention could  
14 be due “no later than 28 days after the jury was discharged.” As described in the accompanying  
15 declaration of Joseph B. Warden, it is Gilead’s view that, because the jury was instructed to skip  
16 the questions regarding derivation and prior invention after deciding that Gilead had not proven  
17 its written description and enablement defenses, (Dkt. No. 388), derivation and prior invention  
18 could be considered “jury issue[s] not decided by a verdict.” Accordingly, it is Gilead’s view  
19 that its motion for judgment as a matter of law with respect to those issues could be due on April  
20 21, 2016—28 days after the jury was discharged. To preserve its rights, therefore, Gilead  
21 intends to file its motion with respect to the defenses of derivation and prior invention on or  
22 before April 21, 2016.

23 3. Merck and Ionis disagree with Gilead’s view and believe that the Court ruled that  
24 if Gilead failed to prove its written description or enablement defenses, as a matter of law there  
25 could be no derivation or prior invention in this case, and that the Court instructed the jury  
26 accordingly. (Dkt. 352 at 32, 33). Although Merck and Ionis do not agree that it is necessary or  
27 proper for Gilead to file its motion on April 21, 2016, to avoid burdening the Court with a  
28 dispute about whether Gilead can file the motion, Merck and Ionis do not oppose Gilead’s filing

1 of the motion on April 21, 2016 to preserve Gilead's position.

2 4. To facilitate simultaneous briefing on all motions, the parties agree, subject to this  
3 Court's approval, that if Gilead files its motion with respect to its defenses of derivation and  
4 prior invention on or before April 21, 2016, Gilead may file its motion without briefing and  
5 briefing on that motion may be subsequently submitted on the same schedule with briefing on  
6 the other post-trial motions after entry of judgment.

7 5. The parties have not previously modified the schedule for any post-trial motions.

8 6. These changes will not alter the date of any other event or deadline already fixed  
9 by Court order.

10 For the foregoing reasons, the parties respectfully request that this Court order that Gilead  
11 may file its motion for judgment as a matter of law with respect to derivation and prior invention  
12 on or before April 21, 2016, without briefing, and that briefing on that motion may be  
13 subsequently submitted on the same schedule with briefing on the other post-trial motions after  
14 entry of judgment.

15  
16 Dated: April 14, 2016

FISH & RICHARDSON P.C.

17 By: /s/ Joseph B. Warden

18 Attorneys for Plaintiff  
19 GILEAD SCIENCES, INC.

20  
21  
22 Dated: April 14, 2016

WILLIAMS & CONNOLLY LLP

23 By: /s/ Stanley Fisher

24 Attorneys for Defendant  
25 MERCK & CO., INC. and Defendants and  
26 Counterclaimants MERCK SHARP &  
27 DOHME CORP. and ISIS  
28 PHARMACEUTICALS, INC.

**SIGNATURE ATTESTATION**

Pursuant to Civil Local Rule 5.1(i)(3), I attest under penalty of perjury that concurrence in the filing of this document has been obtained from its signatory.

/s/ Joseph B. Warden

**PURSUANT TO STIPULATION, IT IS SO ORDERED:**

Dated: April 14, 2016

Beth Labson Freeman

Honorable Beth Labson Freeman